TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 204.

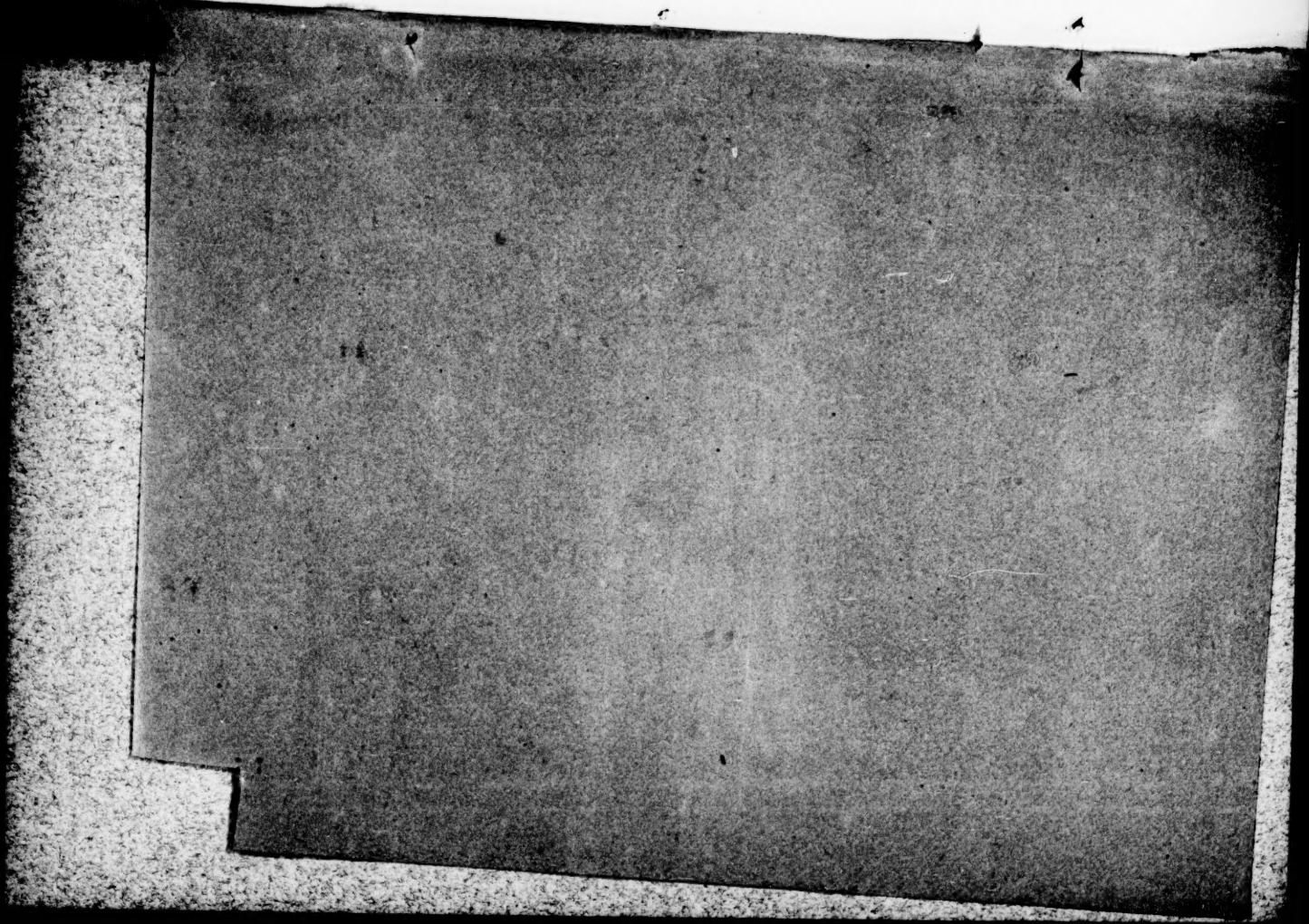
JOHN KLEIN, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1876.



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1 UNITED STATES OF AMERICA:

Circuit court of the United States in and for fifth judicial circuit and district of Louisiana.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

Petition.—Filed March 16th, 1876.

To the honorable the circuit court of the United States, fifth circuit, district of Louisiana:

The petition of John Klein, a citizen and resident of the State of Mississippi, respectfully represents:

That the city of New Orleans, a municipal corporation of the State of Louisiana, within this judicial district, is justly and truly indebted to him in the sum of eighty-nine thousand dollars ($89,000), besides interest at six per cent. on $77,000 from May 1st, 1874; on $9,000 from January 1st, 1875; and on $3,000 from March 1st, 1875, until paid, for this, to wit, that he is the holder and owner, first, of forty-four bonds
2 of one thousand dollars each, issued by the city of New Orleans to the New Orleans, Jackson and Great Northern Railroad Company, under and by virtue of the provisions of an act of the legislature of Louisiana, No. 109, approved March 15th, 1854, and endorsed by the president and secretary of said company in blank, thirty-two of said bonds, to wit, Nos. 111, 112, 113, 114, 127, 151, 154, 166, 324, 326, 397, 486, 487, 513, 523, 558, 668, 765, 768, 792, 969, 1433, 1449, 1450, 1453, 1478, 1479, 1480, 1481, 1483, 1484, and 1556 redeemable May 1st, 1874; nine of said bonds, to wit, Nos. 1811, 1814, 1815, 1823, 1825, 1826, 1827, 1891, and 1894 redeemable January 1st, 1875; and three of said bonds, to wit, Nos. 1901, 1903, and 1984 redeemable March 1st, 1875, all letter B; and also forty-five bonds of one thousand dollars each, issued by the said city of New Orleans to the New Orleans, Opelousas and Great Western Railroad Company, under and by virtue of the provisions of an act of the legislature of Louisiana, No. 108, approved March 15th, 1854, and endorsed by the president and secretary of said company in blank, said bonds, to wit, Nos. 85, 86, 87, 146, 158, 306, 451, 503, 504, 505, 506, 507, 509, 510, 511, 512, 515, 516, 517, 518, 523, 524, 525, 526, 527, 535, 631, 668, 676, 759, 764, 765, 766, 767, 794, 851, 852, 866, 868, 985, 1011, 1031, 1032, 1036, and 1120, all letter C, redeemable May
3 1st, 1874, all of said bonds having at their issue twenty years to run, and all past due from the above dates respectively, and bearing six per cent. interest from maturity, none of which interest or principal has been paid, although due and amicable demand has been made, nor has said city made suitable provision for payment of either principal or interest as required by law, as will more fully appear from the said bonds, which will be produced on the trial of this case, and which are annexed to and made part of this petition:

Wherefore, the premises considered, your petitioner prays that said city of New Orleans be duly cited, and that after all due proceedings, he have judgment against the said city of New Orleans for eighty-nine thousand dollars ($89,000), with six per cent. interest on $77,000 from May 1st, 1874; on $9,000 from January 1st, 1875; and on $3,000 from March 1st, 1875, until paid, and reserving the right to apply for an

order to compel the said defendant to levy and collect a tax to pay said judgment; he further prays for costs and all general relief.

(Signed) J. Q. A. FELLOWS, *Att'y.*

List of city bonds "past due," favor railroad, attached to petition and filed March 16th, 1876.

4 Nos. 111, 112, 113, 114, 1483, 1484, 1433, 513, 558, 969, 1556, 397, 486, 487, 1453, 1481, 1478, 1479, 1480, 1449, 1450, 523, 127, 324, 326, 668, 765, 768, 792, 151, 154, 166, letter B, favor N. O., Jackson & G't N. R. R'd, redeemable May 1st, 1874, (32) bonds, $1,000 each, $32,000.

Nos. 1811, 1814, 1815, 1823, 1826, 1825, 1826, 1827, 1891, 1894, letter B, favor N. O., Jackson & G. N. R. R'd, redeemable January 1st, 1875, (9) bonds, $1,000 each, 9,000.

Nos. 1901, 1903, 1984, letter B, favor N. O., Jackson & G. N. R. R'd, redeemable March 1st, 1875, (3) bonds, $1,000 each, 3,000.

Nos. 631, 764, 794, 868, 985, 1011, 504, 506, 523, 524, 525, 526, 527, 866, 851, 852, 1120, 146, 503, 505, 535, 676, 759, 765, 766, 767, 516, 517, 518, 515, 306, 85, 86, 87, 158, 668, 451, 507, 509, 510, 511, 512, 1031, 1032, 1036, letter C, favor N. O., Opelousas & G't W. R. R'd, redeemable May 1st, 1874, (45) bonds, $1,000 each, $45,000.

Citation.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

5 You are hereby commanded to summon the City of New Orleans to comply with the demand of John Klein, a citizen of the State of Mississippi, contained in the petition of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of April, 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 16th day of March, A. D. one thousand eight hundred and seventy-six, and of the Independence of the United States of America the 100th year.

[SEAL OF COURT.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return of service.

6 Received March 16, 1876, by the U. S. marshal, and on the 17th day of March, 1876, served a copy hereof, with accompanying petition, on the City of New Orleans by handing the same to C. J. Leeds, the mayor of said city, in person, in this city.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Exception to jurisdiction.—Filed March 27th, 1876.

U. S. circuit court, district of Louisiana.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

Now comes the City of New Orleans and excepts herein to the jurisdiction of this honorable court to try this cause for this, to wit:

1st. That the said John Klein, the plaintiff herein, is not a citizen of the State of Mississippi, as by him alleged, but is really and truly a citizen of the State of Louisiana, as is also this appearer.

2d. That the bonds upon which this suit is brought are not the
7 property of the said John Klein, as alleged, but are really the property of citizens of Louisiana, who are incompetent to sue this appearer in this hon. court for want of jurisdiction therein to hear the cause.

Wherefore respondent prays that this exception may be maintained, and that plaintiff's petition may be dismissed with costs.

(Signed) B. F. JONAS,
City Att'y.

Personally appeared Cha's J. Leeds, mayor of New Orleans, who, being duly sworn, says that all of the facts and allegations in the foregoing exception are true, to the best of his knowledge and belief.

(Signed) CHA'S J. LEEDS.

Sworn to and subscribed before me this 27th day of March, A. D. 1876.

(Signed) W. T. HOUSTON,
First Justice of the Peace.

Waiver of jury.—Filed April 19th, 1876.

JNO. KLEIN
vs.
CITY OF NEW ORLEANS.

8 Agreed to waive the jury and try the cause by the court.
April 19, '76.

(Signed) H. C. MILLER,
B. F. JONAS.

Order, exception overruled.—Extract from minutes of 19th April, 1876.

November term, 1875.

NEW ORLEANS, *Wednesday, April 19th, 1876.*

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

The exception to the jurisdiction was called for trial by the court, the parties having in writing waived the jury.

Henry C. Miller for Fellows, plaintiff's attorney; B. F. Jonas for exceptor.

And after hearing the evidence, it is ordered that said exception be overruled with costs.

Answer.—Filed April 20th, 1876.

U. S. circuit court.

9 JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

Now comes the City of New Orleans, and for answer to plaintiff's petition denies all and singular the allegations thereof.

Wherefore she prays to be hence dismissed with costs and for general relief.

(Signed) B. F. JONAS,
City Attorney.

Waiver of jury.—Filed May 2nd, 1876.

U. S. circuit court.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS.

It is hereby stipulated and agreed to dispense with the jury on the trial of this case on the merits and to submit the cause to the decision of the court on the evidence to be offered and filed.

(Signed) J. Q. A. FELLOWS,
Att'y for Pl'ff.

" B. F. JONAS,
City Att'y, for Defendant.

NEW ORLEANS, *May 2d*, 1876.

10 *Judgment.*

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1876

NEW ORLEANS, *Tuesday, May 2nd*, 1876.

Court met pursuant to adjournment.

Present, Hon. Edward C. Billings, district judge.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

This cause came up for trial.

J. Q. A. Fellows for plaintiff; B. F. Jonas for defendant.

When, under the agreement on file, the jury was waived and the cause taken up before the court; and after hearing the pleadings and the evidence, the plaintiff's case being fully made out, it is ordered, ad-

judged, and decreed that the plaintiff, John Klein, do recover from the City of New Orleans, a municipal corporation of the State of Louisiana, the sum of eighty-nine thousand dollars, with six per cent. interest per annum on seventy-seven thousand dollars from 1st May, 1874, on nine thousand dollars from 1st January, 1875, and on three thousand dollars from 1st March, 1875, till paid, and costs of suit.

11 Judgment rendered May 2nd, 1876.
Judgment signed May 6th, 1876.
(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and order to withdraw bonds on file.—Extract from the minutes of 2d May, 1876.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

On motion of J. Q. A. Fellows, of counsel for plaintiff, it is ordered that he have leave to withdraw from the record the eighty-nine bonds of one thousand dollars each, forty-four issued to the New Orleans, Jackson and Great Northern Railroad Company, and forty-five issued to the New Orleans, Opelousas and Great Western Railroad Company, by the city of New Orleans, filed this day in evidence in this case, and corresponding in numbers with those in the petition, being the bonds upon which suit was brought.

Writ of fieri facias.

12 Circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, greeting:

You are hereby commanded that you demand from the City of New Orleans the sum of eighty-nine thousand dollars, with six per cent. per annum interest on seventy-seven thousand dollars from 1st May, 1874, on nine thousand dollars from 1st January, 1875, and on three thousand dollars from 1st March, 1875, till paid, and costs of suit; clerk's costs, $54.30; att'y fee, 10.00, cash; which John Klein lately recovered by judgment of the circuit court of the United States for the 5th circuit and district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said City of New Orleans, in your distrtct, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said City of New Orleans in your district, and that you have those moneys before our said court to render to the said

13 John Klein for the judgment aforesaid on the 30th day from the the date hereof, together with this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of May, A. D. 1876, and 100th year of the Independence of the United States.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return on fi. fa.—Filed June 20th, 1876.

Received May 19th, 1876, by the U. S. marshal, and on the 24th day of May, 1876, seized and took into my possession the property described in the printed slip hereto attached and made part of this return, and notified the defendant of such seizure in the manner pointed out by law, and after the legal delay had elapsed from the time of such seizure I advertised the said property for sale in the New Orleans Republican, a newspaper printed and published in New Orleans, sale to take place on the 1st day of July, 1876, when, on the 13th day of June, 1876, the said property was ordered by the court to be released from seizure. The time having arrived for the return of this writ, the same is returned.

N. O., June 19, '76.

(Signed) S. B. PACKARD,
U. S. Marshal.
By JOHN TAHY,
D'y Marshal.

11 *Printed slip annexed to marshal's return.—Advertisement.*

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

In the United States circuit court for the district of Louisiana.

By virtue of a writ of fieri facias to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Saturday, July 1, 1876, at 12 o'clock m., at the main entrance of the custom-house, on Canal street, in this city, the right, title, and interest of the city of New Orleans, in and to the following described property, viz:

1st. The vacant square of ground, bounded by Canal, Delta, Gravier, and Water streets, having, English measure, 155 feet 8 inches 6 lines front on Canal street; 209 feet 4 inches front on Delta street; 137 feet 8 inches front on Gravier street, and 177 feet 6 inches 5 lines front on Water street, measurement according to survey and plan of the city surveyor.

2d. The vacant square of ground bounded by Gravier, Delta, Poydras, and Water streets, having, English measure, 137 feet 8 inches front on Gravier street; 253 feet 3 inches front on Delta street; 124 feet 10 inches 7 lines front on Poydras street, and 220 feet 5 inches 4 lines front on Water street, measurement according to survey and plan of the city surveyor.

All the right, title, and interest of the city of New Orleans, in the following described property, said right, title and interest being as described in the original acts of transfer by said city, a perpetual ground rent on the property described under the condition that prices
15 on which said ground rent is based should remain secured and effected on said property, the purchasers never to be compelled to pay the same at any time whatever, in all or no part, provided they should pay into the hands of the treasurer of said corporation an annual and perpetual rent in four equal times every three months, to begin from the day of said sale, and at the expiration of said time, the said rent being interest at the rate of six per cent. per annum on the capital price of said sales, and moreover, that the said purchasers should never be permitted to extinguish said rents by paying the said capital price, but

after twenty-nine years from the day when said sales took place, and even after the expiration of the twenty-nine years, it is agreed that the said purchasers should not be permitted to extinguish the said rents but by paying in full and by one and single payments each of the said capital prices, and not partially, and beside under the several clauses and stipulations of the said several acts of transfer by the said city of New Orleans, as found in the notarial process of M. de Armas, a former
16 notary of this city, of dates October 13, 1809, November 23, 1809, June 4, 1810, July 24, 1810, August 8, 1810, September 4, 1810, October 15, 1810, October 24, 1810, April 16, 1811, June 17, 1811, July 5, 1811, August 7 and 21, 1811, September 10, 12, and 13, 1811, January 17, 1812, May 4, 19, and 20, 1812, June 8 and 27, 1812, October 2, 1812, March 14, 1814, August 4, 1814, October 31, 1815, and November 18, 1816.

1. Lot No. 16, in square bounded by Dumaine, S't Claude, S't Philips, and Rampart streets, having 60 feet on Rampart street by 120 feet deep, French measure, according to the plan of Tannesse, on a capital of $1,700, lately or now in the possession of widow C. de Morant.

2. Lots Nos. 2 and 3, in the square bounded by Rampart, Toulouse, Burgundy, and S't Peter streets; lot No. 2 having 29 feet front on Rampart street by 89 feet in depth; lot No. 3 having 29 feet front on Rampart street, and extends in depth with the same width to 55 feet, after which it increases to 47 feet in width, and extends with that width back 34 feet, making the whole depth 89 feet adjoining lot No. 2, French measure, on a capital of $1,000, now or lately belonging to Jacob Hoffman, on plan of city surveyor, annexed to an act before F. de Armas, July 18, 1825.

3. A lot 53 feet front on Rampart street by 55 feet in depth, in the
17 same square, and adjoining the above described property, and also a lot in the same square, adjoining the above, having 18 feet front on Rampart street by 60 feet in depth, French measure, on a capital of $580, now or lately possessed by Thomas Lorney.

4. Lot No. 3, in the same square, having 35 feet front on S't Peter street by 89 feet in depth; also lots Nos. 7 and 8, in same square, each having 21 feet front on Rampart street, by 60 feet in depth, on a capital of $1,910 dollars, now or lately possessed by G. Mauiche.

5. Part of lot in square bounded by Canal, Camp, Common, and Magazine streets, the whole lot having 60 feet front on Canal street by 120 feet in depth, as per plan of Tannesse, on a capital of $3,533.33, and now or lately in possession of Howard Henderson, the other part No. 48.

6. Two lots Nos. 1 and 2 at the corner of Toulouse and Burgundy streets in the square bounded by those streets and Rampart and S't Peter streets, having 120 feet, French measure, on each of Toulouse and Burgundy streets; this subject to a ground rent of five per cent. on a capital of $1,820, and now or lately in the possession of H. E. Saweyre.

7. Part of lot No. 41, in the square bounded by Rampart, Ur-
18 sulines, S't Claude streets and Bayou Road, having 37 feet front on Rampart street by 120 feet in depth, French measure, on a capital of $855 dollars, now, or lately possessed by M'r's P. Lanaux.

8. Lot No. 24, having 69 feet on the lower side of Esplanade street, between Dauphine and Burgundy streets, by 100 feet in depth, French measure, according to a plan of Pilié, May 1st, 1827, on a capital of $1,500, now or lately possessed by I. M. Rouzau.

9. Part of lot No. 38, according to the plan of Tannesse, the whole lot having 60 feet front on Canal street, by 120 feet in depth, French measure, in the square bounded by Canal, Burgundy, Custom-house and

Rampart streets, on a capital of $333.33, now or lately possessed by widow Hollander.

10. Lot No. 2, on the lower side of Esplanade street, between Moreau (now Conde) and Levee streets, having forty-five feet front on Esplanade street, by 100 feet in depth, French measure, according to the plan of Tannesse, on a capital of $1,460, now or lately possessed by Pierre Malochee.

11. Lot 37 in the square bounded by Esplanade, Burgundy, Rampart, and Hospital streets, having 44 feet front on Esplanade street, by
19 106 feet, on a capital of $1,000, now or lately held by S. E. Percy.

12. Part of lot No. 23, on a plan of Tannesse, in the square bounded by Dauphine, Barracks, Esplanade, and Bourbon streets, having 29 feet 6 inches front on Dauphine street by 161 feet and 11 inches 7 lines in depth and 22 feet 5 inches in the rear, on a capital of $425, now or lately possessed by A. Pluche.

13. Part of lot No. 47, on plan of Tannesse, in the square bounded by Canal, Baronne, Common, and Carondelet streets, having 64 feet front on Canal street by 123 feet in depth, American measure, on a capital of $350, now or lately possessed by Holmes & Mills.

14. Two lots of ground, according to a plan of Pilie of March 24, 1845, in the office of Herman, notary, in the square bounded by Canal, Bourbon, Custom-house, and Dauphine streets; lot No. 1 having 23 feet 6 inches front on Dauphine street by 129 feet 11 inches in depth; lot No. 2 having 24 feet front on Dauphine street by 129 feet 11 inches in depth on the side towards Canal street, at a distance therefrom of 31 feet 6 inches, and 73 feet 3 inches in depth on the side toward Custom-house street, separating it from an alley of same depth 4 feet
20 wide, opening into Dauphine street, in common with lots Nos. 2 and 3, and said lot at that depth closing at right angles 7 feet, and then running back in depth 24 feet 6 inches on the line of property now or lately belonging to D'r Peniston, then closing again at right angles 4 feet 6 inches 4 lines, and then running back at right angles a depth of 32 feet 2 inches 1 line, on the line separating it from property now or lately belonging to A. Rousseau, then closing again at right angles 5 feet 1 inch, and thence running back at right angles a depth of 31 feet 6 inches on a line separating it from the property now or lately belonging to William Courull, and finally having 30 feet 10 inches 4 lines width in the rear, on a capital of $2,550, now or lately possessed by M'r's Greeves.

15. Part of lot No. 46, on a plan of Tannesse, in the square bounded by Bienville, Burgundy, Custom-house, and Rampart streets, having, French measure, 26 feet front on Bienville street by a depth of 119 feet 2 inches, on a capital of $769, now or lately possessed by Henrietta Mothieu.

16. Lots Nos. 2 and 3 in the square bounded by Esplanade, Barracks, and Conde streets and the levee, on the plan of Tannesse, each
21 having, French measure, 60 feet front on Esplanade street by 96 feet 6 inches on the side towards Conde or Chartres street, and 90 feet on the other side line, on a capital of $2,100, now or lately possessed by Widow Barjoe.

17. Another part of lot No. 46, on plan of Tannesse, in the square bounded by Bienville, Burgundy, Custom-house, and Rampart streets, having 26 feet 6 inches front on Bienville street, running back between parallel lines to a depth of 19 feet 2 inches, at which depth it increases in width 3 feet 5 inches at right angles on the side of Burgundy street and from thence extending back at right angles 59 feet, and thence in

creasing in width at right angles 30 feet 3 inches, and having a depth on the line toward Rampart street of 168 feet 2 inches, on a capital of $797, now or lately held by A. B. J. Desrayoux.

18. Lot No. 38, forming the corner of Canal and Carondelet streets, in the square bounded by those streets and Common and Baronne streets, having 60 feet front on Canal street by a depth and front of 120 feet on Carondelet street, French measure, on a capital of $2,425, now or lately possessed by A. and M. Henie.

19. Lot No. 10 in the square bounded by Maine, Rampart, S't
22 Claude, and S't Ann streets, having 60 feet front on Maine street by 120 feet in depth, French measure, between Rampart and S't Claude streets, on a capital of $800, now or lately possessed by M'r's Francis Augusta.

20. Lot No. 39 in the square bounded by Canal, Baronne, Common, and Carondelet streets, having 60 feet front on Canal street by a depth of 120 feet, French measure, between lots Nos. 38 and 40, bounded in the rear by lot 37—a part of the lot—on a capital of $862.66, now or lately in the possession of D. Gowan or estate of George May.

21. Lot No. 22 in the square bounded by S't Philip, Rampart, S't Claude, and Dumaine streets, having 60 feet front on S't Philip street and a depth of 120 feet, French measure, on a capital of $800, now or lately possessed by F. M. A. Monio.

22. A lot of ground in the square bounded by Canal, Dauphine, Custom-house, and Bourbon streets, being the fourth lot, as at present divided, from the corner of Canal and Dauphine streets, and formed of part of lots Nos. 20, 21, and 22, of the plan of Tannesse, having 22 feet 8 inches front on Canal street by a depth of 117 feet 10 inches, on
23 a capital of $860, now or lately possessed by D'r Warren Stone.

23. A lot at the corner of Esplanade and Bourbon streets, in the square bounded by those streets and Royal and Barracks streets, having, American measure, 65 feet $\frac{1}{10}$ line front on Esplanade street by a depth and front of 142 feet 10 inches 6 lines on Bourbon street, 106 feet 6 inches $7\frac{3}{10}$ lines deep on the side toward Royal street, at which depth said lot widens at right angles toward Royal street 65 feet 1 line, at which point at right angles, and in a line parallel to Royal street, it extends in depth towards Barracks street 34 feet $4\frac{5}{10}$ inches, and then running to Bourbon street to the end of the first line, as above, on Bourbon street, a distance of 130 feet $2\frac{1}{10}$ lines, as per plan of C. de Armas, March 31, 1855, in the office of A. Ducatel, notary, on a capital of $1,900, now or lately possessed by Widow Alvarez Fisk or Anne Plauty.

24. Part of lot No. 17, on the plan of Tannesse, in the square bounded by Canal, Bourbon, Custom-house, and Dauphine streets, having 39 feet 4 inches on Bourbon street by 149 feet 6 inches deep between parallel lines, on a capital of $2,200, now or lately possessed by Jasper Strong.

24 25. A part of lots Nos. 20, 21, and 22, on the plan of Tannesse, in the square bounded by Canal, Dauphine, Custom-house, and Bourbon streets, having 22 feet 8½ inches on Canal street by 117 feet 10 inches in depth, American measure, on a capital of $840, now or lately possessed by Louis Barrett.

26. A lot of ground in the square bounded by Canal, Dauphine, Custom-house, and Bourbon streets, being a part of the original lots Nos. 20, 21, and 22, on the plan of Tannesse, having 22 feet 7 inches on Canal street by 117 feet in depth, being the lot at present divided next to Dauphine street; also, a lot in same square and forming part of said original lots Nos. 20, 21, and 22, having 22 feet 8 inches front on Canal

street by 117 feet 10 inches in depth; also, another lot, being part of original lot No. 19 in said square, having 22 feet front on Canal street by 68 feet deep; also, another lot, being a portion of original lot No. 19 in the same square, having 45 feet front on Canal street by a depth of 85 feet; the whole of the above on a capital of $4,320, now or lately belonging to M'r's Charlotte Piffet.

27. Two lots in the square bounded by Canal, Chartres, Cus-
25 tom-house streets, and Exchange Place, being lots Nos. 1 and 2 of the plan of the city surveyor of March 25, 1831, lot No. 1 having 18 feet 3½ inches front on Canal street by 50 feet in depth, and lot No. 3 having 18 feet 4 inches front on Canal street by 50 feet in depth, on a capital of $2,650, now or lately possessed by S. V. Sickles or John A. Turnell.

28. Lot No. 6 (5), in square bounded by Canal, Dorsière, Custom-house, and Levee or Peters streets, being known as No. 11 Peters or Levee street, having 30 feet front on Levee street, by a depth of 71 feet, running through to Dorsière street, on a capital of $5,200, now or lately in the possession of F. Lacroix.

29. Lot No. 10, of the plan of Tannesse, in the square bounded by Royal, Custom-house, Bourbon, and Canal streets, having 36 feet front on Royal street by a depth of 98 feet, on a capital of $4,000, now or lately held by R. A. Porter.

30. Parts of lots Nos. 45 and 46, of the plan of Tannesse, in the square bounded by Bienville, Burgundy, Rampart, and Custom-house streets, the same being in two lots, each having 34 feet on Bienville street by 120 feet in depth, on a capital of $2 34, now or lately held by B. F. Fox or his heir.

31. Part of lot No. 49, of the plan of Tannesse, in the square
26 bounded by Rampart, Bienville, Burgundy, and Custom-house streets, having 32 feet front on Rampart street by depth of 122 feet on Bienville street, forming the corner of those streets, on a capital of $820, now or lately held by widow Hollander.

32. A lot forming a part of the original lots Nos. 20, 21, and 22, on the plan of Tannesse, in the square bounded by Canal, Bourbon, Custom-house, and Dauphine streets, having 22 feet 8 inches front on Canal street by 117 feet in depth, on a capital of $860, now or lately possessed by L. F. Frigerio.

33. Two lots, being part of original lots No. 47 and 48, on the plan of Tannesse, in the square bounded by Rampart, Bienville, Burgundy, and Custom-house streets, having 42 feet 15.6 inches on Rampart street, 32 feet 3 inches 7 lines on a line parallel to Custom-house street, 42 feet 11.6 inches on a line parallel to Burgundy street, 32 feet three inches 7 lines on the line parallel to Bienville street; also, another lot, part of the same original lots, having the same dimensions, and adjoining the above, on a capital of $690, now or lately possessed by J. R. Sterret.

34. Part of lot No. 19, on the plan of Tannesse, in the square
27 bounded by Canal, Bourbon, Custom-house, and Dauphine streets, having 30 feet front on Canal street by a depth of 60 feet, and known as lot No. 4 on a plan of city surveyor, on a capital of $1,000, now or lately held by M'r's Hogan.

35. The lot known as lot No. 13, in the square bounded by Burgundy, Rampart, Toulouse, and S't Peter streets, having 44 feet front on Burgundy street by a depth of 127 feet, on a capital of $770, now or lately possessed by Baptist Macera or Nacera.

36. A lot composed of part of the lots Nos. 20, 21, and 22, on the plan

of Tannesse, having 22 feet 8 inches front on Canal street by a depth of 117 feet, on a capital of $861, now or lately held by J. Vincent.

37. Lot No. 18, on a plan of Tannesse, in the square bounded by Esplanade, Bourbon, Dauphine, and the streets below, having 62 feet front on the lower side of Esplanade street by 100 feet in depth, French measure, on a capital of $1,400, now or lately held by widow Tala.

38. A lot designated by the letter E, on a plan of Forstal, first of March, 1832, in the square bounded by Exchange alley, Custom-
28 house, Royal, and Canal streets, having, English measure, 19 feet 5 inches front on Exchange alley by a depth of 59 feet 4 inches, on a capital of $1,050, now or lately held by W. T. Leacock.

39. A lot in the square bounded by Canal, Baronne, Common, and Carondelet streets, described on a sketch of Pilié, 15th of June, 1842, as having 31 feet 4 inches front on Baronne street, 30 feet 4 inches 4 lines in the rear, by a depth of 71 feet 4 inches on the side toward Common street, bounded by lot No. 2 on said sketch and by a common alley; also, a lot adjoining the above, measuring 9 feet on the line of the adjoining property, about 31 feet 10 inches on the line of the first described lot, about 32 feet 8 inches on the common alley, said alley opening on Baronne street, and 5 feet on the other side, parallel to Baronne street, on a capital of $2,750, now or lately possessed by widow O. Lelevre.

40. A lot in the square bounded by Burgundy, Toulouse, S't Peter, and Rampart streets, having 35 feet front on Toulouse street by 120 feet in depth, on a capital of $700, now or lately possessed by S. G. Doucver, and bought by him by C. Bresnou, widow of P. Michou.

29 41. Part of original lot No. 27, of the plan of Tannesse, in the square bounded by Esplanade, Burgundy, History, and Love or Rampart streets, having 37 feet 4 inches front on Esplanade street by a depth of 106 feet 6 inches 7 lines, on a capital of $700, now or lately possessed by widow L. J. Sigrer.

42. Two lots of ground in the square bounded by Rampart, Dumaine, S't Philip, and S't Claude streets, each having 40 feet front on Dumaine street by a depth of 91 feet 8 inches, and adjoining each other, on a capital of $1,550, now or lately possessed by A. Pitot.

43. A lot of ground in the square bounded by Rampart, Dumaine, S't Ann, and S't Claude streets, having 55 feet front on Rampart street by a depth of 127 feet, and being the second lot from the corner of Dumaine street, on a capital of $1,630, now or lately possessed by Paulin Durel.

44. Lot No. 8, in the square bounded by Burgundy, Toulouse, Rampart, and S't Peter streets, having 35 feet front on S't Peter street by a depth of 95 feet, on a capital of $180, now or lately possessed by widow Marie Louise Courcelle.

45. Lot No. 37, of the original plan of Tannesse, in the square
30 bounded by Rampart, Canal, Burgundy, and Custom-house streets, having 60 feet front on Canal street by 120 feet in depth and front on Burgundy street, French measure; also, part of lot No. 39, of the same plan and in the same square, having, French measure, 60 feet front on Burgundy street by a depth of 150 feet, on a capital of $1,251.43, now or lately possessed by E. Cannon.

46. Lot No. 2, being part of lots Nos. 7 and 8 of plan of Tannesse, in the square bounded by Exchange alley, Custom-house, Royal, and Canal streets, having 22 feet front on Canal street by 64 feet front and depth on Exchange alley, on a capital of $2,050, now or lately possessed by M'r's E. D. Neville.

47. Part of lot No. 18, in the square bounded by Canal, Bourbon, Dauphine, and Custom-house streets, on a plan of Tannesse, the whole lot having 60 feet front on Canal street by 120 feet in depth and front on Bourbon street, French measure, on a capital of $800, now or lately possessed by Hubert and Rolling.

48. The other part of lot No. 5 of the original plan of Tannesse, in the square bounded by Canal, Magazine, Common, and Camp streets, having 60 feet front on Canal street by a depth of 140 feet,
31 French measure, on a capital of $3,333.33, now or lately possessed by Matthew Morgan and Antoine Oliver.

49. Lots Nos. 5 and 6 (3 and 4), on a plan of Tannesse, in the square bounded by Canal, Chartres, Custom house, and Dorsiere streets, having, French measure, each 60 feet front on Canal street by 124 feet front and depth on Chartres street, and 109 feet on the other side line, on a capital of $2,650, now or lately possessed by A. N. and S. P. Morgan and the heirs of Morgan.

Terms cash.

United States marshal's office, New Orleans, May 30, 1876.

S. B. PACKARD,
United States Marshal.

M'y 31, J'e 3, 10, 17, 24, J'y 1.

Rule to dissolve seizure.—Entered and filed June 5th, 1876.

U. S. circuit court, district of Louisiana.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS. } No. 7801.

On motion of B. F. Jonas, city attorney of counsel for the city
32 of New Orleans, defendant herein, and on his showing that plaintiff has issued an execution on the judgment obtained by him herein, and has caused the marshal to seize and advertize for sale under said writ certain real estate described fully in said advertisement, contained in the New Orleans Republican of May 31st (a copy of which is hereto annexed), which said property is advertised to be sold by the said marshal by virtue of said writ on Saturday July 1st, 1876, and on his further shewing that the said marshal has been hitherto enjoined by this hon'l court, in suit No. 7367, from seizing, selling, or offering to sell the two squares of ground first described in the said advertisement on the ground that said squares are public property and not liable to seizure for debt, which injunction is still in full force and effect; and on his further shewing that the other properties seized and described in said advertisement are the annual ground rents belonging to the city and appertaining to the said described property, and that said ground rents form a portion of the public revenues of the city of New Orleans, and cannot be seized under execution by the creditors, and on further shew-
33 ing that the judgment herein, on which said execution has been issued, was rendered against the city upon bonds issued by her to the New Orleans, Jackson and Great Northern Railroad Co., and the New Orleans, Opelousas and Great Western Railroad Co., under and in pursuance of acts Nos. 108 and 109 of the legislature of Louisiana for the year 1854, and on further showing that it is provided by those acts that the stock held by the city in said railroad companies shall be held as a pledge for the redemption of those bonds, and that no other provision

was made for their redemption or payment, and that consequently plaintiff cannot obtain execution against any other property of this defendant until he has first exhausted said stock; and on further shewing that the plaintiff, through the marshal, was duly notified before advertisement, that all of the said described property was exempt from seizure, it is ordered that plaintiff, John Klein, do shew cause on the 8th day of June, 1876, at 11 o'clock a. m., why the said seizure should not be dissolved and set aside, and the property described released on the grounds above set forth.

34 NOTA.—For description of real estate referred to & annexed to above rule to dissolve, see page 14 to page 31 of this transcript.

Marshal's return on rule to dissolve seizure.

Received June 6th, 1876, by the U. S. marshal, and on the same day served a copy hereof on J. Q. A. Fellows by handing the same to him in person in this city.

(Signed) S. B. PACKARD,
U. S. Marshal.
By S. W. REED, *Deputy.*

JUNE 8TH, 1876.

Rule by pl'ff on N. Orleans, Mobile & Texas R. R. Co. & others.—Entered and filed June 6th, 1876.

U. S. circuit court.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

On motion of the plaintiff herein by his counsel, J. Q. A. Fellows, and on suggesting to the court that under a writ of fieri facias issued herein the marshal has seized and advertised for sale to satisfy said writ
35 among other property two certain squares of ground bounded by Canal, Water, Gravier, and Delta streets and by Gravier, Water, Poydras, and Delta streets, and further suggesting that the plaintiffs and Ja's A. Raynor and E. D. Morgan, two of the defendants in a suit entitled the New Orleans, Mobile and Texas R. R. Co. vs. The City of New Orleans et al., No. 7369, of the docket of this court, have combined together and conspired contrary to equity and good conscience, and have in said suit obtained an injunction in said suit against the said marshal from selling, &c., said two squares of ground, as will appear by the record in said suit, No. 7367, of the docket of this honorable court, entitled the State of L'a vs. The City of New Orleans et als., and that by said injunction the said marshal is prohibited from proceeding with the sale of said property, and your mover is hindered and prevented thereby from executing his said judgment, it is ordered that said N. Orleans, Mobile and Texas R. R. Co., James A. Raynor and E. D. Morgan and the U. S. marshal shew cause on Thursday, 8th June, 1876, at
36 11 o'clock a. m., why said injunction so far as it affects the two squares of ground aforesaid should not be dissolved and why the said marshal should not proceed with their sale to satify the writ of fieri facias in his hands issued in this cause on the following grounds:

1st. That this mover is no party to the proceedings or cause in which

the said injunction was issued, and no notice of said writ or proceedings or application for an injunction.

2nd. That said injunction was issued without any notice to any of the parties and on a combination of the parties to said suit and a conspiracy on their part, with intent to prevent your mover from executing his said writ and collecting his judgment.

3rd. That by the rules of chancery proceedings no injunction can issue, except on and after notice to all parties interested against its issuance, and that equity abhors a conspiracy and combination, and will grant no equity relief to any parties in such conspiracy, the same being contrary to equity and good conscience.

4th. That said plaintiffs and Raynor and Morgan have no title or claim to the property in question, the same being res adjudicata in a
37 suit between said railroad company and the city of New Orleans as decided by the supreme court of Louisiana in May, 1874, and as found reported in 27th annual reports, p. .

5th. That said injunction issued without bond or security.

Marshal's return.

Received June 7th, 1876, by the U. S. marshal, and on the same day served a copy hereof on Jno. A. Campbell by handing the same to him in person in this city.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED, *Deputy.*

Counter motion of E. D. Morgan & al.—Filed June 8th, 1876.

In the circuit court of the United States, district of Louisiana.

KLEIN
vs.
CITY OF NEW ORLEANS.

Edwin D. Morgan and James A. Raynor, who have been summoned to appear to the motion filed in this cause, respectfully represent that in the month of January, 1875, under the orders of this honorable court, they were admitted as trustees and appointed receivers of the
38 railroads, depots, stations, property of the New Orleans, Mobile and Texas R. Company in a suit between these trustees and that corporation and others; that under those orders they have held the property described in their suit against the City of New Orleans and Madame Myra Clark Gaines at the time of the filing of the bill as receivers and trustees and were accountable to the court for the same, and they have presented accounts under its orders to the court aforesaid.

That the said defendants ought not to be deprived of possession, as an officer accounting to the court, unless by its authority, and that the seizure by the marshal in this case of Klein was illegal, unauthorized, and, were it done willfully, a contempt of the court.

These respondents, as a counter motion to the one filed against them, respectfully pray of your honor to make an order to restrain the levy of the execution, and any other proceeding on it against any of the property embraced in the orders granted by this court in the suit of the New Orleans, Mobile and Texas R. Co. vs. Madam Myra Clark Gaines et al.

(Signed) J. A. CAMPBELL,
For Def'ts to Motion.

39 *Hearing and submission of rule to dissolve seizure.—Extract from minutes of 8th June, 1876.*

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

The motion to dissolve seizure was called for trial—J. Q. A. Fellows for plantiff, B. F. Jonas for defendant—and, after hearing the evidence and argument, the court took time to advise.

Extract from city ordinance No. 2826, adopted November 3d, 1874, offered in evidence by pl'ff on trial of rule to dissolve seizure, June 8th, 1876.

An ordinance providing for the sale, at auction, of certain real estate belonging to the city of New Orleans.

Whereas an agreement was entered into on the twenty-ninth May, 1874, between the City of New Orleans and Myra Clark Gaines, by virtue of which the payment of a certain judgment in her favor for $125,266.79, with interest and costs, in the suit of Myra Clark Gaines vs. The
40 City of New Orleans, No. 2695, United States circuit court for the fifth circuit and district of Louisiana, was extended and postponed until the fifteenth day of December, 1874: Now, therefore, in order to meet the payment of said judgment, interest, and costs on the day agreed upon, as well as to release from all liability the securities of the city on the appeal bond in said case, against whom judgment was rendered as such—

Be it ordained that the real estate herein described be sold at public auction by J. B. Walton, a public auctioneer of this city, on the 3d of December, 1874, to the highest bidder, without limit or reservation, for ten per cent. cash at the moment of adjudication, forty per cent. cash when the act of sale is signed, and the balance in notes at six, twelve, and eighteen months, divided into sums to suit the vendor, bearing interest at the rate of eight per cent. per annum from date of sale till final payment, and special mortgage and vendor's privilege, with penal clause of five per cent. in case of suit.

Be it further ordained that the mayor be, and he is hereby, authorized and instructed to sign, on behalf of the city before the city notary, all the acts of sale for property sold under this ordinance.

Be it further ordained that the sale be advertised in such news-
41 papers in the city of New Orleans and elsewhere as the mayor and administrators of finance and public accounts may direct, and that they be authorized to procure such plans and publish such hand-bills and posters as they may deem necessary.

Be it further ordained that the mayor and the administrators of finance and public accounts be, and are hereby, constituted a committee with full powers to supervise the sale and to make all arrangements in relation to the same that they may consider to the interest of the city; to receive and pay in to the city treasurer the ten per cent. cash received at the time of adjudication by the auctioneer and the cash and notes received from purchasers by the city notary, and to pay over the proceeds of the sale, or as much thereof as may be requisite in settlement of the judgment herein referred to, with interest and costs, and the costs and expenses of the sale, and for that purpose to discount the notes and apply the proceeds to the settlement.

Description of the property to be sold.

That most valuable square of ground, with the right of batture and future accretions in front of it, bounded by Delta, Canal, Water, and Gravier streets, subdivided into eight lots, numbered from
42 1 to 8, all running through from Delta to Water street, measuring each 26 feet 2 inches front on Delta street, about 22 feet 2 inches front on Water street, by depths varying from 137 feet 8 inches front on Gravier street to 155 feet 8 inches 6 lines on Canal street. The square measuring 155 feet 8 inches 6 lines on Canal street, 209 feet 4 inches on Delta street, 137 feet 8 inches on Gravier street, and 177 feet 6 inches 5 lines on Water street.

That large, valuable, and important square for commercial use, with the right of batture and future accretions in front of it, bounded by Gravier, Poydras, Delta, and Water streets, measuring 137 feet 8 inches front on Gravier street, 124 feet 10 inches 7 lines on Poydras street, 253 feet 3 inches on Delta street, and 220 feet 5 inches 4 lines on Water street, subdivided into ten lots numbered from 1 to ten, inclusive, and measuring about 25 feet 4 inches each front on Delta street, and about 22 feet each front on Water street, by depths varying from 137 feet 8 inches front on Gravier street to 124 feet 10 inches 7 lines front on Poydras street, &c., &c., &c.

Sale of property, &c., by the city of New Orl's to P. Misotière, offered in evidence by pl'ff on trial of rule to dissolve seizure, June 8, '76.

43 Pardevant moi, Michel de Armas, dûment commissioné et autorisé notaire public pour la ville et paroisse de la Nouvelle Orléans, y demeurant et les témoins ci-après nommés.

Fut présent l'honorable James Mather, maire de la ville de la Nouvelle Orléans, y demeurant et stipulant en cette qualité.

Lequel a déclare que par les deliberations du conseil de ville de la Nouvelle Orléans en date du trente et un Aout et du quinze Septembre de la présente année, il a été arrêté que les terrains appartenant à la commune de cette ville qui sont situés entre les fossés des fortifications et le faubourg Marigny seraient vendus au plus offrant et dernier encherisseur à la charge d'une rente annuelle et perpétuelle à raison de six pour cent sur le capital de la dite vente, et à la charge des autres conditions mentionnées dans les dites déliberations et notifiées au public par les encanteurs au moment de l'enchère.

Qu'en vertu de ces déliberations, il a été procédé le vingt cinq Septembre de la présente année à la vente et adjudication des dits terrains en faveur de divers particuliers, et notamment à celles du terrain
44 numero deux en faveur du sieur Pierre Misotière.

Pourquoi le dit sieur comparant, en sa qualité susdite, voulant passer au dit sieur Pierre Misotière le titre necessaire à l'effet de le faire jouir du terrain qui lui a été ainsi adjugé, a déclaré, vendre, ceder, quitter et délaisser au nom de la corporation de la Nouvelle Orléans, comme de fait il vend, céde, quitte et délaisse par les presentes à titre de cens et de rente annuelle et perpétuelle au dit sieur Pierre Misotière demeurant en cette ville, a ce présent et acceptant pour lui, ses hoirs et ayans cause.

Un terrain formant un parallelogramme rectangle, désigné sous le susdit numero deux, ayant soixante pieds de face à la promenade publique projetée, sur cent pieds de profondeur, borné d'un côté par le terrain désigné sous le numero un, adjugé au dit sieur Pierre Misotière, de

l'autre côté par le terrain désigné sous le numero trois, adjugé au sieur Louis Lauaix, et par derrière par la ligne limitrophe entre le faubourg Marigny et la ville de la Nouvelle Orléans, tel qu'il est tracé au plan qui en a été dressé en double le six Juin de la présente année par le sieur Jacques Tannesse, arpenteur et voyer de la ville de la Nouvelle Orléans, une des copies duquel place est restée déposée au greffe
45 du conseil de ville et l'autre en l'étude du notaire soussigné pour recours; le dit terrain appartenant à la corporation de la Nouvelle Orléans comme faisant partie des communes dont la propriété lui a été reconnue et confirmée par une loi du trois Mars de l'année mil huit cent sept rendu par le Congrès des Etats Unis d'Amerique, et est libre de toutes hypothèques ainsi qu'il résulte du certificat du conservateur des hypothèques en date de ce jour, desquelles hypothèques mon dit sieur vendeur en sa qualité guarantit d'ailleurs mon dit sieur acquéreur ainsi que de tous troubles, évictions et autres empêchements quelconques qu'il pourrait éprouver relativement au terrain à lui ainsi vendu, pour par lui, ses hoirs et ayans cause, jouir, faire et disposer en toute propriété comme et de la même maniire que la corporation de la Nouvelle Orléans en a joui jusqu'au jour de la susdite adjudication et ce sous les conditions suivantes.

La presente vente est faite pour et moyennant la somme de mille six cent vingt cinq piastres gourdes, qui est le prix pour lequel le dit terrain a été adjugé à mon dit sieur acquéreur comme il est dit ci-dessus,
46 laquelle somme de mille six cent vingt cinq piastres restera réservée et affectée sur le terrain vendu, sans que mon dit sieur acquérer puisse être contraint à la payer entre les mains du trésorier de la corporation de la Nouvelle Orléans, une rente annuelle et perpetuelle de la somme de quatre vingt dix sept piastres et cinquante cents en quatre termes égaux, de trois mois, en trois mois à partir du jour de la présente adjudication, et à l'échéance de chaque terme, la dite rente formant l'intérêt à six pour cent du prix capital de la présente vente, et en outre à la charge par mon dit sieur acquéreur de ne pouvoir prétendre à éteindre la dite rente constituée en remboursant le capital du prix de la présente vente qu'après vingt neuf ans du jour de la présente adjudication, cette clause étant de rigueur, et sans laquelle la presente vente n'aurait pas eu lieu, et même après l'expiration des dites vingt neuf années, mon dit sieur acquéreur ne pourra eteindre la dite rente qu'en remboursant son entier et par un seul et même paiement le prix capital de la susdite vente, et non partiellement et par à compte, et à la
47 charge enfin par mon dit sieur acquéreur de ne pouvoir vendre, céder et retroceder le susdit terrain qu'aux mêmes charges et conditions auxquelles il lui a été vendu par les présentes, et dans ce cas de remettre à ses frais entre les mains du trésorier de la corporation de la Nouvelle Orléans une expedition de l'acte de la vente, cession ou retrocession qu'il fera du susdit terrain dans les six jours à partir de la date de la passation du dit acte, mon dit sieur acquéreur promettant et s'obligeant en outre dans les six mois à compter du jour de la dite adjudication de faire entourer en murs, planches ou pieux debout le dit terrain qui lui est présentement vendu.

Et mon dit sieur acquereur a déclaré accepter la susdite vente, et s'obliger à remplir les charges et conditions y apposées, en consequence il a déclare que tant en son nom qu'en celui de ses hoirs et ayans cause il fonde et constitue par les présentes en faveur de la corporation de la Nouvelle Orléans et de leurs successeurs une rente annuelle et perpetuelle de la somme de quatre vingt dix sept piastres et cinquante cents,
48 qui a commencé à courir du vingt cinq du mois de Septembre de

la présente année, jour de l'adjudication qui lui a été faite du terrain sus mentionné, et ce pour l'intérêt à raison de six pour cent de la somme de mille six cent vingt cinq piastres, formant le prix capital de l'adjudication du susdit terrain, duquel terrain lui, dit sieur acquéreur, se reconnait en due possession comme lui ayant été delivré dès l'instant de la dite adjudication, renonçant à cet égard aux lois relatives à la tradition et au délai qu'elles accordent pour prouver qu'elle a été faite de la même maniere que si le dit délai fut expiré. Au moyen de quoi mon dit sieur acquéreur s'oblige, tant pour lui que pour ses hoirs et ayans cause, à payer entre les mains du trésorier de la corporation de la Nouvelle Orléans la somme de quatre vingt dix sept piastres et cinquante cents pour la rente annuelle et perpétuelle par lui constituée ainsi qu'il est dit ci-dessus, et ce en quatre termes égaux de trois mois, en trois mois qui ont commencé à courir du vignt cinq de Septembre de la présente année, jour de la susdite adjudication, consentant
mon dit sieur acquéreur, dans le cas qu'il manquerait à payer
49 deux termes consécutifs de la dite rente à perdre tous les droits
à lui acquis sur le terrain à lui vendu par les présentes, et à en être deguerpi sur un simple ordre de justice obtenu sur la requête assermentée du vendeur ou de ses successeurs en office, constatant l'existence de la dite dette sans préjudice des dommages intérêts à pretendre dans le cas ou le terrain vendu eut été détérioré ou fut diminué de valeur.

Et pour la plus grande sureté du paiement de la présente rente et de l'accomplissement des autres obligations contenues au present acte, mon dit sieur acquéreur déclare hypothequer spécialement le terrain à lui vendu, ainsi que tous les édifices et constructions qui pourraient y être faits par la suite, sans que les dits édifices ou constructions puissent être un obstacle au deguerpissement de l'acquereur ou de ses hoirs ou ayans cause à défaut de paiement de deux termes consécutifs de la dite rente constituée comme il est dit ci-dessus.

Et dans le cas ou mon dit sieur acquéreur viendrait à faire cession de
biens à ses créanciers ou a en obtenir terme et délai, il est convenu
50 que le vendeur en sa qualité ne sera pas alors censé lui avoir transféré la propriété du terrain par lui donnée à rente perpétuelle par les presentese en raison de ce qu'il n'en aurait pas reçu le prix capital; en consequence, mon dit sieur acquéreur ne sera considéré en ce cas que comme locataire ou fermier ou possesseur précaire de la chose et la corporation de la Nouvelle Orléans sera preferée sur ce terrain à tous les creanciers de l'acquéreur quelqu'anterieurs ou privilegiés qu'ils soient et sera habile à y être reintégrée comme ayant conservé le domain réel du dit terrain, sans préjudice des actions relativement aux arrérages échus ou à l'indemnité qui pourrait lui être due pour la déterioration ou moindre value du dit terrain, desquelles actions elle pourra user contre les autres biens de l'acquéreur concurrement avec ses autres créanciers.

Et il est de plus convenu entre les parties que le dit sieur acquéreur supportera les frais du présent acte ainsi que le coût du certificat de non hypothèque, copie et inscription des présentes, de même que la quittance et main levée de l'hypothèque à l'époque que le dit sieur acquéreur
fera l'anéantissement de la susdite rente en effectuant aussi qu'il
51 est ci-dessus stipulé le paiement du prix capital de la susdite rente ensemble avec les arrérages qui seront alors dûs, bien entendu que le dit amortissement ne pourra être fait qu'après l'expiration des vingt neuf années ci-dessus determinées.

Et pour l'exécution des dites presents le dit sieur constituant a élu à

son domicile irrevocable et perpétuel en cette ville de la Nouvelle Orléans en sa demeure, auquel lieu, &a, nonobstant, &a, promettant, &a, obligeant, &a, renonçant, &a. Dont acte—

Fait et passé à la Nouvelle Orléans en l'étude de nous, notaire, le treizieme jour du mois d'Octobre de l'année mille huit cent neuf, et la trente quâtriéme de l'Indepence. des Etats Unis d'Amérique, en présence des sieurs Pierre Louis Morel et Jean François Crevon, toux deus témoins requis et domiciliés en cette ville, qui ont ainsi que les sieurs compraranta signé avec nous, notaire, après lecture faite.

(Original signed:) Ja's Mather, maire, Misotière, P. L. Morel, J. F. Crevon.

MICH'L DE ARMAS,
Not. Pub.

I, John Bendernaghel, custodian of notarial records, parish of
52 Orleans, do certify the foregoing to be a true and correct copy of the original act in the records of Michel de Armas, late notary, now in my custody.

In faith whereof I hereunto set my hand and seal this 8 June, A. D. 1876.

[SEAL.] (Signed) J. BENDERNAGHEL,
Custodian of Notarial Records.

Translation of foregoing act of sale from city of New Orls., to Misotiere.

Before me, Michel de Armas, a duly commissioned and qualified notary public for the city and parish of New Orleans, residing in said city, and the witnesses hereinafter named, appeared the honorable James Mather, mayor of the city of New Orleans, a resident of said city, and acting in his said capacity of mayor, who declared that by the deliberations of the council of the city of New Orleans, of date the 31st of August & 15 September of the present year, it was resolved that the lots be-
longing to the commune of this city, which are situated between
53 the ditches of the fortifications and the faubourg Marigny, should be sold to the highest and last bidder on condition of an annual and perpetual rent at the rate of six per cent. on the capital price of said sale and in conformity with the other conditions set forth in said deliberations and duly made public by the auctioneers before the sale. That by virtue of these deliberations it was, on the 25 September of the present year, proceeded to the sale and adjudication of the said lots of ground in favor of divers parties, and particularly to that of lot No. 2, in favor of Pierre Misotière.

Wherefore, the said appearer, in his capacity aforesaid, desiring to transfer to the said Pierre Misotière the necessary title, to the end that he may enjoy the lot that was thus adjudged to him, has declared to sell, cede, part with, and abandon, in the name of the corporation of New Orleans, and he does now by these presents sell, cede, part with, and abandon, subject to a servitude and to an annual and perpetual rent to the said Pierre Misotière, residing in this city, here present and accept-
ing for himself, his heirs, and assigns,
54 A lot of ground forming a rectangular parallelogram designated by the No. two, as aforesaid, having 60 feet front on the projected public walk, by 100 feet deep, bounded on one side by the lot designated by the No. 1, adjudged to the said Pierre Misotière; on the other side, by the lot designated by the No. 3, adjudged to Louis Lanoix, and in the rear by the boundary line of the faubourg Marigny and the city of New Orleans, as per plan made in duplicate on 6th June of the present year

by Jacques Tannesse, engineer and surveyor of the city of New Orleans; one of the copies of said plan is deposited in the office of the city council and the other in the office of the undersigned notary for reference; the said lot of ground belonging to the corporation of New Orleans as part of the commons, its ownership having been recognized and confirmed by a law of the Congress of the United States of 3d March, A. D. 1807. Said property is free of all mortgages, as appears by the certificate of the recorder of mortgages dated this day; and the said vendor in his said capacity furthermore guarantees said purchaser against all mortgages, troubles, evictions and other impediments whatsoever that may arise relative to the said lot of ground to him so sold, for, by
55 him, his heirs and assigns to enjoy and dispose of forever and in full property in the same manner that the corporation of New Orleans has enjoyed it up to the day of the said adjudication, subject to the following conditions.

The present sale is made for and in consideration of the sum of one thousand six hundred and twenty-five dollars, the price for which said lot of ground was adjudged to the said purchaser as stated above, which said sum of sixteen hundred and twenty-five dollars shall remain secured and effected on said lot of ground, the said purchaser never to be compelled to pay the same into the hands of the treasurer of the corporation of New Orleans, an annual and perpetual rent of ninety-seven $\frac{50}{100}$ dollars, in four equal times, every three months, to begin from the day of said sale, and at the expiration of said time, the said rent being interest at the rate of 6% on the capital price of said adjudication; and moreover, that the said purchaser should never be permitted to extinguish the said ground rent by reimbursing the price of the present sale, but after 29 years from the day when said sale took place, this clause
56 being the absolute condition of this sale, without which it would not have taken place, and even after the expiration of the said 29 years the said purchaser shall not be permitted to extinguish the said rent but by paying in full and by one single payment the capital price of said sale, and not partially; and lastly, on the condition that if the said purchaser shall sell, cede, and retrocede the said lot of ground, it shall be on the same terms and conditions that he purchased it. In that event he shall place into the hands of the treasurer of the corporation of New Orleans a copy of the act of sale, cession, or retrocession of said sale within six days from the date of the execution of said act, the said purchaser promising and obligating himself, within six months from the date of said adjudication, to surround the said lot with walls, planks, or pickets.

And the said purchaser hath declared to accept the said sale, and binds himself to comply with the terms and conditions above set forth; accordingly he has declared that, as well in his name as in that of his heirs and assigns, he establishes and constitutes by these presents, in favor of the corporation of New Orleans and of their succes-
57 sors, an annual and perpetual rent of the sum of ninety-seven $\frac{50}{100}$ dollars, to begin on the 25 of September of the present year, the day on which the lot of ground above mentioned was adjudged to him, this being the interest at the rate of 6% on the sum of sixteen hundred and twenty-five dollars, the price of sale of the said lot of ground, of which lot of ground he, the said purchaser, acknowledges due possession, which was delivered to him from the moment of adjudication, renouncing in that respect to the laws relative to the delivery and delay allowed to prove that it was made in the same manner as if said delay had expired. Wherefore the said purchaser binds himself, his heirs,

administrators, &c., to pay unto the treasurer of the corporation of New Orleans the sum of four hundred and twenty-seven $\frac{50}{100}$ dollars for the annual and perpetual rent accepted by him as above set forth, in four equal times, every three months, which begun the 25th September of the present year, day of the present sale, the said purchaser agreeing in case he should fail to pay two consecutive terms of the said sale he shall lose all his rights to the lot herein sold, and to be dispossessed thereof upon a simple order of court granted upon an affidavit made by his vendor or his successors, said purchaser acknowledging his
58 indebtedness, without prejudice to any damages that could be claimed in case the lot of ground so sold should have deteriorated or diminished in value.

And to better secure the payment of the said rent and the accomplishment of the other obligations contained in this act, the said purchaser declares that he specially mortgages the said lot of ground, as well as all the buildings and improvements that might be made hereafter, and the erection of said buildings and improvements shall not prevent the dispossession of the purchasers, his heirs or assigns, by reason of the non-payment of two consecutive terms of said ground rent, as specified above.

And in case the said purchaser should make a cession of his property to his creditors, or obtain time and delay, it is agreed that the vendor, in his capacity aforesaid, shall not be considered as having transferred the ownership of the lot for a perpetual rent because he would not have received the capital price. Consequently the said purchaser in such case will be considered as lessor or farmer or precarious possessor of the thing, and the corporation of New Orleans will have preference upon said lot over all creditors of the purchaser, no matter the rank or privilege of their debts, and the corporation of New Orleans shall be reinstated in said property as having retained the real owner-
59 ship of said lot, without prejudice to actions relative to arrears due, or indemnity which might be due, for the deterioration or less value of said lot of ground, of which actions said corporation may avail itself against other property of the purchaser concurrently with the other creditors.

It is further agreed between the parties that the purchaser shall pay the costs of the present act and of the certificate of the recorder of mortgages; also the *the* costs of the receipt and erasure of the mortgage for the cancellation of the said ground rent in paying the capital price of the foregoing sale, with all arrears that may be due then, it being well understood that said erasure can only be made at the expiration of twenty-nine (29) years, as aforesaid.

And for the faithful execution of these presents the said constituent has elected his domicil and residence in the city of New Orleans forever, at which place, notwithstanding, &c., promising, &c., binding, &c., renouncing, &c., as above.

Done and passed at the city of New Orleans, at the office of the undersigned notary, the 13th day of October, 1809, and the 34th year of the American Independence, in presence of Mess'rs Pierre Louis
60 Morel and Jean François Creron, both competent witnesses, domiciliated in the city of New Orleans, as well as the appearers who signed with me, notary, after reading of the same.

(Original signed:) Ja's Mather, mayor. Misotière P. L. Morel. J. F. Creron.

MICH'L DE ARMAS,
Not. Pub.

I, John Bendernagel, custodian of notarial records, parish of Orleans, do certify the foregoing to be a true and correct copy of the original act in the records of Michel de Armas, late notary, now in my custody.

In faith whereof I hereunto set my hand and seal this 8 June, A. D. 1876.

[SEAL.] (Signed) J. BENDERNAGEL,
Custodian of Notarial Records.

Order, seizure dissolved and property released.—Extract from the minutes of 10 June, 1876.

April term, 1876.

NEW ORLEANS, *Saturday, June 10th*, 1876.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

61 This cause came on to be heard upon the motion to dissolve the seizure of certain property herein seized under execution, and was argued by counsel; on consideration whereof, it is ordered by the court that said motion be allowed, and that the seizure of the property described in the printed slip annexed to the motion be dissolved, and said property released by the marshal.

Plaintiff's bill of exceptions.—Filed June 10th, 1876.

United States circuit court, district of Louisiana.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS. } No. 7801.

Be it remembered that in this cause, after a final judgment had been rendered and a writ of fieri facias issued thereon, under which and in order to satisfy said judgment the United States marshal had seized and advertised for sale two squares of ground which had formerly constituted the easterly bank of the Mississippi River, but which by the gradual accretion of said easterly bank had ceased to constitute
62 the banks of said river, but which were now used by the public for wharf or levee purposes, said squares forming a portion of the land known as the "Batture property," and annual ground rents belonging to said city, all of which property is more fully described in the advertisement of the marshal hereto annexed and made part hereof, the defendant herein, the said City of New Orleans, took a rule upon the plaintiff, the said John Klein, which is hereto also annexed and made part hereof.

That, upon the hearing of said rule, the following issues of law were submitted to the court:

1st. Whether said squares of land were liable to seizure and sale under a writ of fieri facias.

2nd. Whether said ground rents were liable to seizure and sale under a writ of fieri facias.

And the court being of opinion that said squares were public property which the said city could not alienate without the permission of the general assembly of the State of Louisiana, and that the said ground rents formed a portion of the public revenues of the said city, so found and ruled, and made said rule absolute, and ordered the release from seizure by the said U. S. marshal both of the said two squares and the
63 said ground rents. To which findings and rulings and to both of them, and to the decree and order of the court therein made, and to each of the same, the defendant in the rule then and there excepted, and since the matters and things herein stated do not appear of record, tenders this his bill of exceptions, which is allowed this 10th day of June, A. D. 1876.

(Signed) EDWARD C. BILLINGS,
Judge.

NOTA.—The description of property referred to and annexed to pl'ff's bill of exceptions is transcribed at pages 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, of this transcript; and the rule to dissolve seizure at pages 31, 32, 33, & 34.

Petition and order of appeal.—Filed August 8th, 1876.

U. S. circuit court.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS. } No. 7801.

To the honorable the judges of the U. S. circuit court for the district of Louisiana.

64 The petition of the plaintiff herein respectfully shows:

That on the 10th of June, 1876, on a proceeding in the nature of an equity proceeding, in the form of a rule, and after the manner of similar proceedings in the State courts of Louisiana, taken by the defendant herein, to cause to be quashed and set aside a seizure by the U. S. marshal of property of the defendant under a writ of fieri facias, issued herein on a final judgment in this case, and by the sale of which property, to satisfy said judgment, and to cause said property to be released from said seizure, for the reasons set forth at length in said rule, this court did maintain said rule and order said seizure to be quashed, and the said property fully described in the advertisement annexed to said rule to be released from seizure, and believing there to be error in said ruling to the prejudice of this petitioner he desires an appeal therefrom to the Supreme Court of the United States, to act as a supersedeas.

Wherefore petitioner prays to be allowed an appeal from the said decree, order, or judgment of June 10th, 1876, and that the whole record in said suit may be sent to the said Supreme Court, that the said
65 Supreme Court may proceed to hear the said cause anew, and that said decree may be reversed and the said rule of defendant discharged with costs; and petitioner further prays for all such other and further orders in the premises as may to right and justice appertain.

(Signed) J. Q. A. FELLOWS,
Att'y.

Let the appeal hereinabove prayed for be granted, returnable to the next term of the Supreme Court, and let the bond be fixed at the sum of five hundred dollars, the surety thereon to justify and be approved by F. A. Woolfley, esq., U. S. commissioner.

(Signed) EDWARD C. BILLINGS,
Judge.

Petition and order for writ of error.—Filed August 8th, 1876.

To the honorable Edward C. Billings, judge presiding of United States circuit court for the circuit and district of Louisiana:

The petition of John Klein, plaintiff in a certain cause in which the city of New Orleans is the defendant, being suit No. 7801 of the
66 docket of the court, respectfully represents:

That, as appears from the record in said suit, petitioner had obtained judgment against the said defendant, which judgment was final, and had caused a writ of fieri facias to issue in execution of the same, and had caused the seizure of certain property to be seized by the United States marshal, and to be advertised to be sold to satisfy said writ and judgment; that pending the delays of law for the sale of said property as aforesaid, the defendant, the said City of New Orleans, took a rule to cause said writ to be dissolved and set aside, and the property seized to be released, on the grounds and for the reasons set up in said rule, to wit:

1st. That the marshal has been hitherto enjoined by this honorable court in suit No. 7367 of the docket of this honorable court from selling or offering to sell the two squares of ground first described in the said advertisement, on the ground that said squares were public property and not liable to seizure for debt, and that said injunction was still in full force and effect.

2nd. That the other properties seized as described in said advertisement were annual ground rents belonging to the city, and apper-
67 taining to said property, and formed a portion of the public revenues of the city of New Orleans, and could not be seized under execution by her creditors.

3d. That the judgment herein on which said execution was issued was rendered against the city, defendant, upon bonds issued by her to the New Orleans, Jackson and Great Northern Railroad Co. and to the New Orleans, Opelousas and Great Western Railroad Co., under acts Nos. 108 and 109 of the legislature of Louisiana for the year 1854, which acts provided that the stock held by the city in said railroad companies was held as a pledge for the redemption of said bonds, and that no other provision was made for their redemption or payment, and that consequently no execution could be obtained by plaintiff against other property of defendant until he has first exhausted said stock.

4th. That the marshal had been duly notified that all the said described property was exempt from seizure. That on the trial of said rule the court held each and all of the grounds taken therein to be good in law, although this petitioner contended that the marshal had only been restrained in said suit No. 7367 from selling at the instance
68 of Myra Clark Gaines vs. The City of New Orleans to satisfy her judgment, and that the restraining order in said suit was inter alias acta, and could not necessarily apply to the petitioner or effects his rights; and although the supreme court of Louisiana had, as was contended, decided the two squares first described to be the private property of the city of New Orleans, and although it was contended that

the other described property, as shown by the title thereto offered in evidence, was not such revenues of the city as exempted the same from seizure for the payment of its debts; and although it was contended that the consideration of the basis of the judgment upon which the execution had issued could not be inquired into in this manner after the same had become final, and even if it could, that the stock held in pledge as aforesaid for the redemption of the bonds forming the basis of the final judgment herein had already been disposed of by the city, and the proceeds covered into the city treasury, as was shown by the testimony offered on the trial of said rule.

Wherefore, for the reasons hereinbefore stated, and on the
69 grounds set up by bill of exceptions, petitioner prays your honor to allow a writ of error to said Supreme Court, to take said cause decided as hereinbefore set up, that said ruling and judgment may be passed upon and reviewed by the Supreme Court of the United States, returnable at the next term of said court, and for such further order as to justice and right may in the premises appertain.

(Signed) J. Q. A. FELLOWS,
Att'y.

Let a writ of error herein be allowed, returnable as prayed for, upon the petitioner giving bond, with good and sufficient surety, in the sum of five hundred dollars, said surety to justify before & be approved by F. A. Woolfley, esq., U. S. commissioner.

June 10th, 1876.

(Signed) EDWARD C. BILLINGS,
Judge.

Bond for appeal.—Filed August 8th, 1876.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, John Klein and Lewis
70 Fishel, are held and firmly bound, jointly and severally, unto the city of New Orleans, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said city of New Orleans, its heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the seventh day of August, in the year of our Lord eighteen hundred and seventy-six.

Whereas John Klein has this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal to the Supreme Court of the United States from a judgment rendered against him on the 10th of June, 1876, in the suit No. 7801, entitled John Klein vs. The City of New Orleans:

Now, the condition of the above obligation is that we, the above-bounden John Klein and Lewis Fishel, will well and truly pay to the said city of New Orleans, the defendant in said suit, all such damages as it may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) JOHN KLEIN. [L. S.]
(") LEWIS FISHEL. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) M. FRANK.
GEO. H. SHOTWELL.

71 DISTRICT OF LOUISIANA, *ss:*

Louis Fishel, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) LEWIS FISHEL.

Subscribed and sworn before me this 8th day of August, 1876.

[SEAL.] (Signed) J. DEVONSHIRE,
U. S. Comm'r.

Bond for writ of error.—Filed August 8th, 1876.

Know all men by these presents, that we, John Klein, as principal, and Lewis Fishel, as surety, are held and firmly bound unto the city of New Orleans in the full and just sum of five hundred dollars, to be paid to the said city of New Orleans, its certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-six.

72 Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, to wit, on the 10th June, 1876, in a suit depending in said circuit court, wherein John Klein was plaintiff and the city of New Orleans was defendant, judgment was rendered against the said John Klein, plaintiff, and the said John Klein having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington the 2nd Monday of October next:

Now, the condition of the above obligation is such that if the said John Klein shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JOHN KLEIN. [SEAL.]
(") LEWIS FISHEL. [SEAL.]

Sealed and delivered in the presence of—
(Signed) M. FRANK.
GEO. H. SHOTWELL.

DISTRICT OF LOUISIANA, *ss:*

73 Lewis Fishel, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) LEWIS FISHEL.

Subscribed and sworn before me this 8th day of August, 1876.

[SEAL.] (Signed) J. DEVONSHIRE,
U. S. Comm'r.

74 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 73 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the rule to dissolve the seizure in the case of John Klein versus The City of New Orleans, No. 7801 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of September, A. D. 1876.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18 day of September, A. D. 1876.

EDWARD C. BILLINGS,
Judge.

75 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the City of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein John Klein is plaintiff and appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said John Klein as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of August, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

76 (Indorsed:) United States circuit court. No. 7801. John Klein vs. City of New Orleans. Citation of appeals.

Marshal's return.

Received Aug. 11, 1876, by the U. S. marshal, and on the 12th day of

71 DISTRICT OF LOUISIANA, *ss:*

Louis Fishel, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) LEWIS FISHEL.

Subscribed and sworn before me this 8th day of August, 1876.

[SEAL.] (Signed) J. DEVONSHIRE,
U. S. Comm'r.

Bond for writ of error.—Filed August 8th, 1876.

Know all men by these presents, that we, John Klein, as principal, and Lewis Fishel, as surety, are held and firmly bound unto the city of New Orleans in the full and just sum of five hundred dollars, to be paid to the said city of New Orleans, its certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-six.

72 Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, to wit, on the 10th June, 1876, in a suit depending in said circuit court, wherein John Klein was plaintiff and the city of New Orleans was defendant, judgment was rendered against the said John Klein, plaintiff, and the said John Klein having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington the 2nd Monday of October next:

Now, the condition of the above obligation is such that if the said John Klein shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JOHN KLEIN. [SEAL.]
(") LEWIS FISHEL. [SEAL.]

Sealed and delivered in the presence of—
(Signed) M. FRANK.
GEO. H. SHOTWELL.

DISTRICT OF LOUISIANA, *ss:*

73 Lewis Fishel, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars over and above his debts and liabilities and property exempt from execution.

(Signed) LEWIS FISHEL.

Subscribed and sworn before me this 8th day of August, 1876.

[SEAL.] (Signed) J. DEVONSHIRE,
U. S. Comm'r.

74 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 73 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the rule to dissolve the seizure in the case of John Klein versus The City of New Orleans, No. 7801 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of September, A. D. 1876.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18 day of September, A. D. 1876.

EDWARD C. BILLINGS,
Judge.

75 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the City of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein John Klein is plaintiff and appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment rendered against the said John Klein as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of August, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

76 (Indorsed:) United States circuit court. No. 7801. John Klein vs. City of New Orleans. Citation of appeals.

Marshal's return.

Received Aug. 11, 1876, by the U. S. marshal, and on the 12th day of

same month and year served a copy of within citation of appeal in the city of New Orleans, defendant named herein, by handing the same to Charles J. Leeds, mayor of said city.

New Orleans, Aug. 12th, 1876.

S. B. PACKARD,
U. S. Marshal.
By S. W. REED,
D'y U. S. Marshal.

On this 22d day of August, 1876, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Subscribed and sworn to before me this 22d day of August, 1876.

F. B. VINOT,
U. S. Comm'r.

77 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the City of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein John Klein is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said John Klein, as in said writ of errror mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11 day of August, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

78 (Indorsed:) United States circuit court. No. 7801. John Klein, plaintiff in error, vs. City of New Orleans, defendant in errror. Citation.

Marshal's return.

Received Aug. 11, 1876, by the U. S. marshal, and on the twelfth day of August, 1876, served a copy hereof on the City of New Orleans, by handing the same to Ch's J. Leeds, the mayor of said city, in person in this city.

S. B. PACKARD,
U. S. Marshal.
By S. W. REED, *Deputy.*

On this 22d day of August, 1876, personally appeared before me, the

subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Subscribed and sworn to before me this 22d day of August, 1876.

F. B. VINOT,
U. S. Comm'r.

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court. before you, or some of you, between John Klein, plaintiff, and the city of New Orleans, defendant, a manifest error hath happened, to the great damage of the said John Klein, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 8th day of August, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.]

F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 7801. John Klein, plaintiff in error, versus city of New Orleans, defendant in error. Writ of error. Filed Aug. 8th, 1876. F. B. Vinot, d'y cl'k.

(Indorsement on cover:) No. 204. John Klein, plaintiff in error, vs. the city of New Orleans. Louisiana C. C. U. S. Filed 9th October, 1876.

UNITED STATES SUPREME COURT.

JOHN KLEIN,
PLAINTIFF IN ERROR,
vs.
THE CITY OF NEW ORLEANS.

No. 204.
October term, 1878.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

I.

The plaintiff having issued execution on a final judgment, caused the United States Marshal to seize certain property of the defendant described in the transcript.

Record, pages 6 to 12.

Instead of stopping the seizure by injunction, the defendant took a proceeding called a "rule to dissolve seizure," on several grounds, as set up in the rule.

Record, pages 12 and 13.

On hearing (Record, page 15,) and evidence, (Record, pages 15 to 21,) the Court allowed the motion and dissolved the seizure.

Record, page 22.

II.

The points made in the motion for a dissolution of the seizure were—

1st. That the two squares of ground firstly and secondly described in the seizure (Record, page 6) "were public property which the City could not alienate without permission of the General Assembly of the State of Louisiana."

2d. That "the ground rents (Record, pages 6 to 12,) formed a portion of the public revenues of the said City," and were, as such, not liable to seizure.

Record, pages 22 and 23.

The Court so found and held, and to such finding and holding the plaintiff took his bill of exceptions, which was allowed.

Record, pages 22 and 23.

III.

1st. The evidence as to the two squares was the ordinance of the City providing for their sale at auction, as an estoppel to the defence of the City.

Record, pages 15 and 16.

2d. The title to one of the lots on which ground rent was due, as a sample for all.

Record, pages 16 to 21.

The first shows that the defendant treated the two squares as private and not public property.

The second, the nature of the ground rent, that it was not a revenue, but a property—an amount due on the price.

Record, pages 19 and 20.

IV.

Treating the motion to dissolve the seizure as a proceeding in equity, preliminary to an injunction, the plaintiff appealed, and has caused the whole Record to be brought up.

Record, page 23.

But the form of proceeding being somewhat irregular and novel, and as the same may be considered as one at law and not in equity, the plaintiff sued out his writ of error, based on his bill of exceptions (Record, pages 22 and 23) and his reasons stated in his petition for the writ.

Record, pages 24 and 25.

The questions, in either form of action, to be decided are—

1st. Are the two squares of ground public property, and therefore not subject to seizure or alienation without the consent of the General Assembly?

2d. Are "the ground rents" such revenues of the City that they cannot be seized?

The Argument.

I.

Are the two squares of ground in question "public property which the City could not alienate without the permission of the General Assembly of the State of Louisiana?"

This seizure was made on the 24th of May, 1876.

Record, page 6.

On November 3d, 1874, the City Council passed Ordinance No. 2826, authorizing the sale of these two squares of ground, and in addition (not included in the seizure,) "the right of batture and future accretions in front of" them.

Record, pages 15 and 16.

There is no pretence that this ordinance has been repealed.

We hold that the City, with that ordinance standing on the record, is estopped from setting up, as a ground for dissolving the seizure, the inalienability of property which it had treated, on another and prior occasion, as alienable. Such a defence comes with a bad grace.

But the pretence of inalienability is not well taken.

The title to this identical property, and the very question here raised, was tried and determined, by the Su-

preme Court of the State of Louisiana, in May, 1874, a few months prior to the ordinance referred to above.

See New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans et als., Charles Morgan, Intervenor, 26 La. Annual, 478.

The plaintiff in that case contended against the City, as the City contends in this, that the property in question was public property, held by the City only for the purposes of administration, and could not be disposed of by it without the consent of the Legislature. That it therefore could not dispose of any portion of the batture in front of the City to Charles Morgan, the intervenor, the Legislature not having given its consent, and that it (the Legislature) had granted the property—a portion of the batture—including the same squares now in controversy, to the Railroad Company.

The Court held, that "a municipal corporation may own property, to and over which the Legislature has no right or control in opposition to, or independently of, the will or consent of the corporation." That "the squares intended for the depots of the plaintiffs were so acquired, aud they cannot be taken by the Legislature while the City corporation exists."

Id. page 483.

"That the theory that the City acquired the property simply as the agent of the State cannot be accepted, because the City can own private property, and because the

former owners intended to, and did, transfer the title thereof to the City."

Id. page 484.

That "the title of said parties (the former owners) vested, by the notarial act of June, 1851, in the Municipality, which then took the place of the former owners, with all their rights, including the right to bring into commerce such portions as might become unnecessary for public use."

Id. 484.

See Dillon on Mun. Corp. §§64, 446 and 686, and notes.

In another case between the same parties, found reported in the same Annual, page 517, the same doctrine was held as to the character of the ownership of the batture in front of the City of New Orleans, the *locus in quo*.

See New Orleans, Mobile and Chattanooga Railroad Company vs. The City of New Orleans et als., 26 La. Annual, 517.

The Court found that "the property stands subject to the will and disposition of its owner, the City of New Orleans, and like all other property in commence it can only be disposed of by the owner. As the State was not the owner, the plaintiffs acquired no title by the grant."

Id. page 523.

Subsequently, on a rehearing in this latter case, a majority of the Court, without in any way militating against the above opinion, held simply that the sole question was, has the State the power to grant to a Railroad Co. the

right of way *through a street* in this City, and decided *that* question in the affirmative.

Id. page 529.

We submit, then, on the first point: That, contrary to the opinion and finding of the Circuit Judge, the two squares of ground, is the private property of the City of New Orleans, which the said City could alienate without the permission of the General Assembly of the State of Louisiana; that by the ordinance of November 3d, 1874, the City had placed the same in commerce, and that therefore, the same was subject to seizure to satisfy the judgment of the plaintiff.

II.

Are the "ground rents," so called, as described in the seizure, (Record, pages 6 to 12,) such revenues of the City as, in law, are exempt from seizure by its judgment creditor?

At the time of the purchase of Louisiana by the United States, there were extensive commons, completely surrounding the City proper and separating it from its extensive suburbs. The City laid claim to the commons, which claim Congress allowed in the following words: "Sect. 3. That the claim of the corporation of the City of New Orleans, to the commons adjacent to the said City, and within 600 yards from the fortifications of the same, be and the same, are hereby recognized and confirmed."

Chap. 91. An act respecting claims to land in the ter-

ritories of Orleans and Louisiana. Approved March 3, 1807.

4 Laws of the U. S. Edition of 1816, page 112.

The City having been, prior to the annexation, under the Cabildo, was, by the first Territorial Legislature, incorporated. In the first section of the act of incorporation it was empowered as follows: By its name it "shall be capable of holding and conveying any estate, real or personal, for the use of said corporation." Sect. 1.

Sect. 13. "That the estates, whether real or personal, the rights, dues, debts, claims or property whatsoever, which heretofore belonged to the City of New Orleans, or was held for its use by the Cabildo under the Spanish Government, etc., etc., shall be vested in the said mayor, aldermen and inhabitants, to be enjoyed, received, collected and used by them and their successors forever."

Acts of La. 1805, chap. XII, pages 46 and 64.

3 Mart. Dig., page 200.

2 Moreau, Lislet's Dig., page 109.

With these powers and muniments of title, the City, on the 31st August and 15th September, [and subsequently,] "Resolved, that the lots belonging to the commons * * * should be sold to the highest and last bidder, on condition of an annual and perpetual rent, at the rate of six per cent. on the capital price of said sale," and by "virtue of these deliberations, [and similar resolutions,] sales were made (Record, page 19) at various dates from October 13, 1809, to November 18, 1816, (Record, page 7,) of portions of these commons, on the

terms as above and as found in the act of title or deed to P. Mesoterie. (Record, pages 19 to 21.

In this particular act, (that of Mesoterie,) is recited that "the present sale is made for and in consideration of the sum of $1625, the price for which said lot of ground wasadjudged, etc., * * * which said sum of $1625 shall remain secured and effected on said lot of ground, the said purchaser never to be compelled to pay the same, [but in lieu shall pay,] into the hands of the treasurer of the corporation of New Orleans an annual and perpetual rent of $97 50, in four equal times every three months, the said rent being interest at the rate of 6 per cent. on the capital price of the adjudication, and moreover, that the said purchaser should never be permitted to extinguish the said ground rent, by reimbursing the price of the present sale, but after 29 years from the day the said sale took place, this clause being the absolute condition of the sale, without which it would not have taken place, and even after the expiration of the said 29 years, the said purchaser shall not be permitted to extinguish the said rent but by paying in full, and by one single payment, the capital price of said sale, and not partially;" (Record, page 20;) and the same was secured by a mortgage, and in case of cession of property to his creditors, it was further "agreed that the vendor [the City] in its capacity as aforesaid, shall not be considered as having transferred the ownership of the lot for a perpetual rent, because she would not have received the capital price; consequently, the said purchaser in such case will be con-

sidered as lessor or farmer, or precarious possessor of the thing, etc., * * * and the corporation of the City of New Orleans shall be reinstated in said property as having retained the real ownership of said lot without prejudice, etc." Record, page 21.

From the above, it is submitted—

1st. That Congress vested the fee simple of the commons then (1807) surrounding the City of New Orleans, in the corporation;

2d. That by the Charter of the City, (Act of 1805,) as well as by the general law governing municipal corporations, the City had the power to dispose of this property as private property;

3d. That as by the act of sale. (see Record, pages 19 and 21,) the City did sell the property as private property, and still retained a quasi or conventional ownership thereof.

The City, at different times, from October 13th, 1809, to November 16th, 1816, under the above authority, (Rec. pages 7 and 7 to 12,) had sold as private property these commons to various individuals, the last and highest bidders, the payment for the same to be made by "an annual and perpetual rent, at the rate of six per cent. on the capital price of said sale," (Record, page 19,) with the right reserved to the purchasers of payment of the whole in one single payment after twenty-nine years from the day of sale.

Record, page 20.

This term of twenty-nine years has long since ended.

The case of the N. O. and Carrollton R. R. Co. vs. Municipality No. One, 7 La. Ann. 148, was cited to show that these "rents" were "a portion of the permanent revenue of the City, to enable the municipal authority to exercise its power of police or government," and therefore could "not be sold under an execution against the Municipality."

But that decision was based on the "act of the Legislature of the 17th February, 1821, which provided that the Mayor and City Council might sell, on perpetual ground rent, such part of the landed property as they should think fit, with express stipulation that the purchaser *should never thereafter have liberty to redeem said ground rent by paying the capital thereof.*"

The Louisiana Court goes on to say, "By this act, we conceive, a legal destination or appropriation of these ground rents was established as a portion of the permanent revenue of the City, to enable the municipal authority to exercise its powers of police and government."

7th La. Annual, page 148

Acts of Louisiana, sec. 4, page 94.

2 Moreau Lislet's Digest, page 132.

Admitting, for the purposes of the argument, the correctness of the opinion of the Supreme Court of Louisiana, as to the effect of the statute of 1821 on the destination of the ground rents on the property sold under that statute, yet it cannot affect the character of such "rents" sold previously, under the general power to sell

given by the act of 1805—the power under this latter act being unlimited.

By the Act of 1821, the purchaser could never redeem the ground rent, thus making it a perpetual source of revenue. By the very terms of the sale, under the general power given by the act of 1805, the purchaser had the option, at any time after the expiration of 29 years, to redeem, by paying in one sum. the capital.

Had the Legislature even intended to make these "ground rents" a perpetual source of revenue. it could not have done so as to the sales, in question in this case, made prior to February 17th, 1821; for there was a subsisting contract between the municipal corporation and the holder of the property, that the latter could redeem the "ground rents" by paying the capital in one sum, at any time after the expiration of 29 years from the day of sale.

The Legislature could not thus pass an act violating the obligation of contracts.

But in the deeds to the property in the commons, sold by the city prior to 1821 (see deed to Mesoterie, Record, page 21), the City retains the right to "be reinstated in said property as having retained the real ownership of said lot, without prejudice to actions relative to arrears due, or indemnity which might be due for the deterioration or less value of said lot of ground, of which actions said corporation may avail itself," etc.; in case the "petitioner should make a cession of his property to his credit-

ors, or obtain time and delay" (respite), or "fail to pay two consecutive terms of the said sale, he shall lose all his rights to the lot herein sold, and be dispossessed thereof upon a simple order of Court, granted upon an affidavit made by his vendor (the City of New Orleans), or its *successors.*"

Record, page 21.

It was this right of property which the plaintiff in error seized under his execution, and not a revenue.

Record, page 6.

The seizure in this case was of the "ground rents" of property sold by the City from October 13, 1809, to November 18, 1816, subject to the right of redemption by the holder of the property, at any time, (the twenty-nine years having expired), on the payment, in one sum, of the capital; or actual ownership in the City in case of non-compliance on the part of the purchaser with the conditions of the sale. It is submitted, therefore, even under the ruling in 7th La. Annual, 148, that we did not seize a perpetual source of revenue, but the capital, representing the property of which the City had the fee simple, or, nnder certain contingencies, the property itself, as a successor to the City in its reservation, quoted above.

III.

The finding and ruling of the judge of the Circuit Court we submit, then, is erroneous on both points, and should be reversed, the seizure reinstated, and the marshal di-

rected to proceed with the sale of the property seized, to satisfy the writ.

So far as the pretensions of Morgan and Raynor, as trustees of the New Orleans, Mobile and Chattanooga Railroad Company, are concerned, they are estopped by *res adjudicata* in the case cited above.

27 La. Annual, 478, 483, 517.

Respectfully submitted,

J. Q. A. FELLOWS,

Attorney for Plaintiff in Error.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1878.

No. 204.

JOHN KLEIN, *Plaintiff in Error,*

vs.

CITY OF NEW ORLEANS.

Brief for Defendant in Error.

The plaintiff having issued execution on a final judgment, caused certain property to be seized as belonging to the defendant.

The city of New Orleans appeared and took a rule to dissolve or quash the said seizure on the following grounds (p. 12, Rec.):

1st. "That the marshal has been hitherto enjoined by this honorable Court, in suit No. 7,367, from seizing, selling, or offering to sell, the two squares of ground first described in the said advertisment, on the ground that said squares are public property, and not liable to seizure for debt, which injunction is still in full force and effect.

2d. "That the other properties seized and described in said advertisement are the annual ground rents belonging to the city, and appertaining to the said de-

scribed property, and that said ground rents form a portion of the public revenues of the city of New Orleans, and cannot be seized under execution by the creditors."

There was a 3d ground, which was not considered by the court below, and is not urged here.

On the trial of this rule, the court made the same absolute, and dissolved the seizure from which judgment plaintiff appealed.

The Court found the following facts:

"And the Court being of opinion that said squares were public property, which the said city could not alienate without the permission of the General Assembly of the State of Louisiana, and that the said ground rents formed a portion of the public revenues of the said city, so found and ruled." (pp. 22 and 23, Record.)

The court will find also, on page 13 of the Record, a motion made by plaintiff in this case, to dissolve the injuction issued in suit No. 7,367 (which enjoined the marshal from seizing the said two lots), and in this motion plaintiff alleges, "that by said injunction the said marshal is prohibited from proceeding with the sale of said property, and your mover is hindered and prevented thereby from executing his said judgment."

This motion was served on the complainants in suit No. 7,367, and, in response, a counter motion was filed. (p. 14, Rec.)

This motion and counter motion was never tried, and the injunction in suit No. 7,367 is still subsisting and in full force.

The facts are fully found in the opinion of the court, and are set forth in the bill of exceptions taken by plaintiff.

Plaintiff says that the city is estopped from setting up as a ground for dissolving the seizure, the inalienability of property which it had treated on another and prior occasion as alienable, and he refers to the ordinance passed November 3d, 1874.

This ordinance was *ultra vires*, and this very proposed sale was the one enjoined.

The two decisions of the Supreme Court of Louisiana quoted in plaintiff's brief, decide that the State could not grant away to private individuals or corporations the property of the city without compensation, and this whether the property was private or held for the public use.

The fact is, as was proven in this case, that the two squares seized form a portion of the public levee, and are devoted to, and required for, the purposes of commerce. The plaintiff has not brought up this evidence in the record, but has chosen to rely upon the judge's findings, which were based in great measure upon this proof.

Besides, he admits by his rule (p. 13) that he and the marshal are enjoined from seizing the said squares by an injunction, still pending and in full force, issued in the same court where he seeks to enforce his seizure.

Secondly, as to the seizure of the ground rents.

"The doctrine of the inviolability of the public revenues by the creditor is maintained, though the

corporation is in debt and has no means of payment but the taxes which it is authorized to collect."

Dillon on Mun. Corp., Sec. 64, 1 La. Ann., 435;

Peterkin vs. *New Orleans*, 2d Woods, 100.

The Supreme Court of Louisiana have expressly docided, in reference to these very ground rents, that they form part of the public revenues of the city and are exempt from seizure.

New Orleans & Carrollon R. R. Co. vs. *Municipality No.* 1, 7th La. Annual, 148.

The syllabus of that decision is as follows: "In authorizing the mayor and city council to sell property on perpetual ground rent, the legislature established a legal destination of the rents, as a portion of the permanent revenue of the city, to enable the municipal authority to exercise its powers of police and government. These rents, therefore, cannot be sold under an execution against the municipality."

The city of New Orleans is the successor of the municipalities.

The plaintiff tries in vain to avoid the effect of this decision and the principle which it establishes. He says he did not seize the ground rents themselves, but the capital from which they are realized. This would be to kill the goose which lays the golden egg. Besides, the title to the property is in others who can, under certain conditions and by certain payments, relieve it at any time from the ground rent. Until then the ground rents are as much a source of pub-

lic revenue as the taxes on the property would be if subjected to private ownership.

The exemption of the revenues from seizure, it may further be observed, was declared by legislation and judicial decision long before plaintiff acquired either his judgment or the bonds upon which it was rendered.

Respectfully submitted,

B. F. JONAS,
Attorney for Defendant in Error.